



## **Case Summary**

D.M.A. appeals his adjudication as a delinquent child for committing what would have constituted Class B felony possession of cocaine and Class A misdemeanor possession of marijuana if committed by an adult. We affirm.

## **Issue**

D.M.A. presents the issue as whether there is sufficient evidence to support the delinquency finding.

## **Facts**

On June 22, 2006, Evansville Police Officers Jerry Rainey and Keith Whitler were working off-duty for the Evansville Housing Authority. The officers were in full uniform and riding in a marked patrol car. Officer Rainey noticed D.M.A. proceeding westbound on a moped. Upon seeing the marked patrol car, D.M.A. suddenly veered south toward the apartment complex where he lived with his mother, Christina Walling. Based on previous contacts with D.M.A., the officers suspected that the moped was stolen. The officers lost sight of D.M.A., but Officer Whitler knew the location of D.M.A.'s residence, and they decided to proceed there. D.M.A. spotted the officers near his residence, at which time he abruptly changed his course again so that he was driving through the grass toward the rear of the apartment building "as if he [were] trying to flee from [the officers]." Tr. p. 38. Upon arriving at D.M.A.'s residence, Officer Rainey saw D.M.A. dismount the moped, throw it to the ground, run inside the apartment through the back door, and then come back out.

The officers then approached D.M.A. to inquire about the moped, at which time Walling arrived. She gave the officers verbal consent to search the apartment. The officers found two plastic baggies in a basket above the washer and dryer in the laundry area, one containing cocaine and the other containing marijuana. The laundry area was located in the rear of the apartment, near the back door through which D.M.A. had just quickly entered and exited the apartment. Officer Whitler also discovered a small digital scale and more baggies in a shaving kit in D.M.A.'s bedroom.

The officers placed D.M.A. in the patrol car. Walling was upset because the apartment complex had a zero-tolerance drug policy, and residents found to have drugs on the premises were immediately evicted. D.M.A. then told his mother that “[he would] take responsibility for what was inside the apartment.” Tr. p. 11.

On June 28, 2006, the State filed a delinquency petition alleging that D.M.A. committed acts which, if committed by an adult, would have been charged as Class B felony possession of cocaine and Class A misdemeanor possession of marijuana. Following a hearing on August 11, 2006, the trial court entered a finding of delinquency on both counts. D.M.A. now appeals those findings.

### **Analysis**

D.M.A. contends that the State failed to prove beyond a reasonable doubt that he was in actual or constructive possession of the marijuana and cocaine found in the apartment. Upon review of a juvenile adjudication, we will consider only the evidence and reasonable inferences supporting the judgment. J.S. v. State, 843 N.E.2d 1013, 1016 (Ind. Ct. App. 2006), trans. denied. We will neither reweigh the evidence nor judge

witness credibility. Id. If there is substantial evidence of probative value from which a reasonable trier of fact could conclude that the defendant was guilty beyond a reasonable doubt, we will affirm the adjudication. Id.

Actual possession of contraband occurs when a person has direct physical control over the item. Gee v. State, 810 N.E.2d 338, 340 (Ind. 2004) (citing Walker v. State, 631 N.E.2d 1, 2 (Ind. Ct. App. 1994)). In this case the contraband was not found on D.M.A.'s person, and the State did not allege that D.M.A. was in actual possession of the illegal items. Rather, the State prosecuted its case against D.M.A. under a theory of constructive possession.

A defendant constructively possesses drugs when the State shows that the defendant has both (1) the capability to maintain dominion and control over the drugs and (2) the intent to maintain dominion and control over the drugs. Id. (citing Lampkins v. State, 682 N.E.2d 1268, 1275 (Ind. 1997)). The proof of a possessory interest in the premises on which illegal drugs are found is adequate to show the capability to maintain dominion and control over the items in question. Id. (citing Davenport v. State, 464 N.E.2d 1302, 1307 (Ind. 1984)). This is so whether possession of the premises is exclusive or not. Id. at 341. However, when a defendant's possession of the premises on which drugs are found is not exclusive, then the inference of intent to maintain dominion and control over the drugs must be supported by additional circumstances pointing to the defendant's knowledge of the nature of the controlled substances and their presence. Id. These "additional circumstances" include: (1) incriminating statements made by the defendant, (2) attempted flight or furtive gestures, (3) location of substances like drugs in

a setting that suggests manufacturing, (4) proximity of the contraband to the defendant, (5) location of the contraband within the defendant's plain view, and (6) the mingling of the contraband with other items owned by the defendant. Id.

D.M.A. contends that the State failed to show that he had a possessory interest in the specific area where the officers found the drugs, namely the laundry area. According to D.M.A., the State therefore failed to show that he had the capability to maintain dominion and control over the drugs.<sup>1</sup> However, Walling testified that D.M.A. lived at the apartment with her. Through that testimony the State proved that D.M.A. had a possessory interest in the apartment where the drugs were found. See Gee, 810 N.E.2d at 341 (quoting Martin v. State, 175 Ind.App. 503, 372 N.E.2d 1194, 1197 (1978) (“[A] house or apartment used as a residence is controlled by the person who lives in it and that person may be found in control of any drugs discovered therein, whether he is the owner, tenant, or merely an invitee.”)). Because proof of a possessory interest in the premises on which illegal drugs are found is adequate to show the capability to maintain dominion and control over the items in question the State satisfied the capability prong of the two-part test for constructive possession. Id. at 340.

D.M.A. further alleges that the State failed to show any additional circumstances to support the inference that he had the intent to maintain dominion and control over the drugs. Because D.M.A.'s possessory interest in the apartment was not exclusive, the

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<sup>1</sup> D.M.A. cites Gee for the proposition that he lacked a possessory interest in the laundry area because the laundry area is not a gathering place for the family, but rather is frequented only by the household member who has the task of washing clothes. However, D.M.A. takes the Gee court's statement out of context. In Gee, the location of the illegal drugs in the laundry area was relevant to the “additional circumstances” analysis of the intent prong of the constructive possession test--not in determining whether the defendant had a possessory interest in the premises for purposes of the capability prong.

State was required to show additional circumstances supporting the inference that D.M.A. had the requisite intent to maintain control over the drugs. In this case, the State presented testimony that D.M.A. told his mother that he would “take responsibility for what was inside the apartment.” Tr. p. 11. Under the circumstances, the trier of fact could have reasonably found this statement to be an admission of guilt. See Richardson v. State, 856 N.E.2d 1222, 1229 (Ind. Ct. App. 2006) (finding defendant’s statement that “[w]e’re not the only ones [who] should be busted” while in deputy’s vehicle to be an incriminating statement for purposes of the intent prong of the constructive possession test). Further, the arresting officers presented testimony that D.M.A. suddenly changed his course twice while driving his moped, each time immediately after seeing the police cruiser. The officers further testified that D.M.A. drove to the apartment where the drugs were found, threw the moped down onto the ground, ran inside for a period of five to ten seconds, and then ran back out. Based on the testimony, D.M.A. likely only had time to run into the laundry room and then back out. The drugs were found in the laundry room. The trier of fact could have reasonably found these gestures to be furtive and attempts at flight. As a practical matter, the State showed additional circumstances sufficient to support an inference that D.M.A. intended to maintain dominion and control over the marijuana and cocaine found in the apartment.

### **Conclusion**

The evidence in this case was sufficient to support the trial court’s finding of delinquency. We affirm.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.